

VICKIE L. FONTENOT
ALLEN J. FONTENOT, JR.

IBLA 90-81, 90-82

Decided October 22, 1991

Appeal from decisions of the Jackson, Mississippi, District Office, Bureau of Land Management, cancelling private maintenance and care agreements and taking possession of five wild free-roaming horses.

Affirmed.

1. Evidence: Sufficiency--Wild Free-Roaming Horses and Burros Act

BLM may properly cancel private maintenance and care agreements for wild horses and repossess the horses when there is sufficient evidence of improper care of the adopted animals to establish that the adopter violated the terms of the agreement.

APPEARANCES: Allen J. Fontenot, Jr., and Vickie L. Fontenot, pro sese; Matthew C. Urie, Esq., Office of the Solicitor, Washington, D.C., for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

On October 31, 1989, Vickie L. Fontenot and Allen J. Fontenot, Jr., filed separate notices of appeal 1/ from two decisions issued on September 29, 1989, by the Jackson District Manager, Bureau of Land Management (BLM), Jackson, Mississippi. These decisions cancelled adoption agreements for five wild free-roaming horses assigned to appellants under authority of the Wild Free-Roaming Horses and Burros Act of December 15, 1971, as amended, 16 U.S.C. §§ 1331-1340 (1988). In each decision, BLM stated that it was taking the action pursuant to 43 CFR 4770.2(b) because each appellant "failed to provide for the basic needs of the horses."

By private maintenance and care agreements, forms 4710-9, signed by appellants on February 24, 1985, and March 20, 1987, two horses were

1/ Vickie L. Fontenot and Allen Fontenot, Jr., wife and husband, applied for and made separate contracts for the care and maintenance of wild free-roaming horses pursuant to BLM's Adopt-A-Horse program. Although they have filed separate appeals, they filed similar statements of reasons and the facts of the appeals are materially interrelated. We therefore consolidate the appeals, docketed as IBLA 90-81 and 90-82, and issue one decision.

assigned to Vickie Fontenot; the other three were assigned to Allen J. Fontenot, Jr. Ms. Fontenot was assigned a red roan stud (Freeze Mark-84003050, Signalment Key-232020272) and a sorrel mare (Freeze Mark-86817079, Signalment Key-HF1DEAAHE). Mr. Fontenot was assigned an appaloosa gelding (Freeze Mark-85508422, Signalment Key-HG1AAAAJP), and two sorrel mares (Freeze Mark-86511229, Signalment Key-HF1AAFFHE and Freeze Mark-85514257, Signalment Key-HF1AEAAHE). The Fontenots did not possess title to these horses.

In early August 1989, BLM determined that the horses were due an inspection. After unsuccessful attempts to locate the Fontenots by telephone and registered mail, BLM contacted the Calcasieu Parish Sheriff's Department in order to locate the horses. On August 15, 1989, the corral facilities maintained by the Fontenots, Vickie Fontenot's two horses, and one horse assigned to Allen Fontenot were inspected by a BLM representative, who was accompanied by the Fontenots, the Deputy Sheriff, and an investigator from the local animal control and care center.

The two horses assigned to Ms. Fontenot were found to be in poor condition. "Both horses were determined to be in class 2, very thin condition, neither had received its appropriate immunizations and neither had been wormed. Moreover, the corral facilities contained garbage piles, no water or salt, and very poor quality food" (BLM Answer, IBLA 90-81, at 2).

Only the sorrel mare FM-86511229 was found in Mr. Fontenot's possession; BLM officials determined her to be in class 1, poor condition. The other horses were corralled in two separate locations. According to BLM's answer,

[T]he appaloosa gelding was in the possession of Mr. Marvin Fontenot and one Sorrel mare was in the possession of Mr. J.K. Boyette, each in a different parish. The sorrel mare FM-8654229 [sic] that was found to be at the Fontenot's corral was in class 1, poor condition. The appaloosa gelding was found to be in class 2, very thin, condition and the other sorrel mare FM-55514257 [sic] was found to be in class 1, poor condition. The presence of scarring indicated that the gelding had been shot with buck shot. Apparently none of the horses had received its appropriate immunizations and none had been wormed. Moreover, some of the corral facilities contained garbage piles, no water or salt and very poor quality food. [2/]

(BLM Answer, IBLA 90-82, at 2).

On September 20, 1989, two BLM representatives, including a wild horse and burro specialist, conducted a second inspection of these horses

2/ The sorrel mares are misidentified in this quote from BLM's answer; the correct freeze marks are 86511229 and 85514257.

and the Fontenots' corral facilities, in the presence of the Fontenots and the Deputy Sheriff. BLM's Answers state the following with respect to the follow-up inspection:

This inspection [of Vickie Fontenot's horses] revealed that the horses' condition had only slightly improved to condition class 3, thin; garbage and other hazards were still present in the corral, and neither horse had been immunized, wormed or tested for equine infectious anemia. The inspectors found that the horses' food had improved in quality but that the quantity of food was still deficient and that only limited amounts of water were available. As a result of this inspection, both horses were repossessed and taken to animal control corrals.

(BLM Answer, IBLA 90-81, at 2).

All three [of Allen Fontenot's] horses were located at the Fontenots' corral facilities. * * * This inspection revealed that the horses' condition had only slightly improved to class 2, very thin condition for sorrel mare FM 86511229 and class 1.5, poor condition for sorrel mare FM 85514257. The gelding's condition was unchanged at class 2, very thin condition. Garbage and other hazards were still present in the corral, and none of [Mr. Fontenot's horses] * * * had been immunized, wormed, or tested for equine infectious anemia.

(BLM Answer, IBLA 90-82, at 2). Allen Fontenot's horses were also repossessed and taken to animal control corrals.

Subsequent to cancellation of the Fontenots' private maintenance and care agreements, the animals were tested by Harry Kleinman, DVM. Blood samples of all horses revealed "high numbers of blood worms, poor nutritional condition, and in the case of a sorrel mare adopted by Mrs. Fontenot and located in the same corral as the other horses, the presence of equine infectious anemia." Id. After failing a second blood test, the infected mare was euthanized on October 3, 1989.

The accuracy of BLM's summary of the evidence of record is confirmed by documents in the case file, including reports and memoranda filed by the investigating officers, Dr. Kleinman's report, and photographs of the horses taken on August 15 and September 20, 1989.

In their notice of appeal and statement of reasons (SOR), the Fontenots request reconsideration of BLM's decision to repossess the horses. Appellants allege that they took the horses in good faith, but were unable to care for them appropriately due to circumstances beyond their control, which included high medical bills for Ms. Fontenot as a result of an automobile accident during a time when Mr. Fontenot became unemployed due to the local recessionary economy. The Fontenots claim they were faced with the choice of feeding the horses or their children, that they relocated two of the horses in order to provide better care, and when they found out that

the care was substandard, they borrowed money to feed them. They contend that they exhibited good faith by providing feed bills to BLM and worming the horses, and that they were not given adequate time to improve the condition of the animals prior to repossession.

[1] The Wild Free-Roaming Horses and Burros Act of 1971, as amended, 16 U.S.C. § 1333(b)(2)(B) (1988), authorizes the Secretary of the Interior to place wild horses with qualified applicants who can assure humane treatment and care. See 43 CFR Subpart 4750. Title to horses placed in private care remains with the Government for a minimum of 1 year after placement and execution of the agreement and until BLM issues a certificate of title. 16 U.S.C. § 1333(c) (1988); 43 CFR 4750.4 and 4750.5. Regulation 43 CFR 4760.1(a) requires the adopter to comply with the agreement and the regulations. The Standard Agreement (Form 4710-9 at 2) specifically prohibits an adopter from causing or being responsible for "inhumane treatment of a wild horse or burro." Regulation 43 CFR 4700.0-5(f) defines "inhumane treatment" as "any intentional or negligent action or failure to act that causes stress, injury, or undue suffering to a wild horse or burro and is not compatible with animal husbandry practices accepted in the veterinary community."

We conclude that BLM properly cancelled the agreements and repossessed the horses in accordance with 43 CFR 4770.2(b) and 43 CFR 4700.0-5(f). Regulation 43 CFR 4770.2(b) provides that failure to comply with the terms of the maintenance and care agreement may result in its cancellation, repossession of the horse subject to it, and disapproval of subsequent requests to adopt additional wild horses or burros. In a recent case, *Grant F. Morey*, 108 IBLA 354, 356 (1989), the Board restated the quantum of proof necessary to cancel a maintenance and care agreement, as follows:

In previous decisions, the Board has held that BLM, in deciding to cancel an Agreement and repossess a horse, "may rely upon an observed 'deteriorating condition of the animals themselves and * * * the credible reports of third parties' in deciding to repossess the animals and cancel a maintenance Agreement * * *." *Mary Magera*, 101 IBLA 116, 119 (1988), quoting *Dennis Turnipseed*, 66 IBLA 63, 67 (1982). * * * As applied in the instant case, [inhumane treatment] * * * simply means that the condition of the horse, as well as the absence of feed and water, was found to reasonably justify its repossession and the cancellation of the Agreement pursuant to 43 CFR 4700.0-5.

Likewise, we find that the facts in this case justify cancellation of the agreements and repossession of the horses under the terms of the maintenance and care agreements signed by the Fontenots, which were in effect at the time of the repossession. The evidence is clear that the horses were malnourished and in urgent need of veterinary care by the time BLM conducted its inspections. The Fontenots argue that 30 days was an inadequate period of time in which to prove that they could return the animals to a healthy condition. The reports submitted by Dr. Kleinman provide